

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Leaves, Hours of Work and Employee Development

Vacation Leave

Proposed Amendment: N.J.A.C. 4A:6-1.2

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:6-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-197.

A public hearing concerning the proposed amendment will be held on:

Tuesday, September 28, 2010, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by November 6, 2010 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

N.J.S.A. 11A:6-1 et seq. grants the Civil Service Commission broad authority regarding the administration of various leaves of absence, with or without pay, for specified State employees. Due to severe fiscal problems, the Commission adopted an emergency rule, and concurrently proposed and later adopted a substantially similar new rule, that permitted appointing authorities to institute temporary layoffs for economy, efficiency, or other related reasons. See N.J.A.C. 4A:8-1.1A.

The adoption of this rule and the temporary layoffs imposed while the rule was in effect were vigorously contested in the Appellate Division, Superior Court, and before the Public Employment Relations Commission (PERC), by various collective negotiations representatives of State employees. In order to resolve the concerns arising from adoption of the temporary layoff rule, the State and several employee unions entered into Memoranda of Agreement (MOA) designed to avert the layoffs of thousands of State employees, maintain the delivery of needed public services and achieve substantial budgetary savings. Initially, the Memorandum of Agreement pertaining to employees of the nine State colleges and universities represented by the Communications Workers of America (CWA) and the International Federation of Professional Technical Engineers (IFPTE) required that covered employees take a total of 10 unpaid furlough days prior to July 1, 2010. In exchange for these unpaid furlough days, the represented employees were to be credited with up to seven “paid leave bank” (PLB) days, available for use after July 1, 2010, in addition to the employees’ annual vacation, sick and administrative leave allotment. It is noted that the provisions regarding unpaid furlough days and PLB days were the same in the other Memoranda of Agreement. (The MOAs also committed the parties to requesting that the Civil Service Commission repeal N.J.A.C. 4A:8-1.1A, the temporary layoff rule. The repeal took effect on December 21, 2009. See 41 N.J.R. 4701(a).) To make the provisions of the MOA regarding unpaid furlough days and PLB days applicable to unrepresented State employees, the Commission issued an order establishing a pilot program for Fiscal Year 2009-

2010. See *In the Matter of Unpaid Furlough Days for Unrepresented Employees Pilot Program*, CSC Docket No. 2010-163 (decided August 5, 2009). This decision also stated that rules would be promulgated to codify the PLB program. The rule proposal was published in the New Jersey Register for public notice and comment at 42 N.J.R. 1116(a).

However, it was recently brought to the attention of the Commission that the MOAs, as they pertained to certain employees of the State colleges and universities, were modified in a separate agreement (called “Committee Statement”) which provided for a different mandatory furlough and PLB program. In that program, employees were required to take seven mandatory furlough days and entitled to receive three PLB days. Therefore, it is necessary to propose an amendment to N.J.A.C. 4A:6-1.2, Vacation leave, to codify the provisions of this separate agreement.

An amendment is proposed to N.J.A.C. 4A:6-1.2, adding a new subsection (m) to codify this separate PLB program. The proposed new subsection (m) would categorize PLB days as additional vacation leave for all full-time 12-month and 10-month employees of the nine State colleges and universities, with the exception of managers and those employees represented by the American Federation of Teachers (AFT) who have utilized up to seven mandatory furlough days in 2009 and 2010. These employees would be credited with up to three additional work days of paid vacation leave, regardless of their years of service. (It is noted that a new

subsection (l), proposed at 42 N.J.R. 1116(a), is marked as “reserved” in the present notice of proposal.)

Proposed new paragraphs (m)1 through 6 would set forth the manner in which the PLB days are credited, tracked and retained.

Paragraph (m)1 would provide that, for every two mandatory furlough days utilized, the employee will earn one additional vacation day, up to a maximum of three vacation days earned for seven mandatory furlough days utilized.

Paragraph (m)2 would provide that, by July 1, 2010, all employees who have utilized seven mandatory furlough days shall be credited with three additional vacation days, including the days provided in paragraph (m)1. However, as provided in subparagraph (m)2i, employees who commenced employment after July 1, 2009, or who were in unpaid status for one or more pay periods between July 1, 2009 and June 30, 2010, and therefore utilized fewer than seven mandatory furlough days, would see their additional vacation days prorated in accordance with a proration chart in the proposed new N.J.A.C. 4A:6-1.2 Appendix D, for 10-month employees, and 4A:6-1.2 Appendix E, for 12-month employees. Subparagraph (m)2ii would provide that part-time employees who utilized a prorated number of mandatory furlough days shall have their paid leave days adjusted in proportion to the number of mandatory furlough days utilized. (It is noted that new N.J.A.C. 4A:6-1.2 Appendices A, B and C proposed at 42 N.J.R. 1116(a) are marked as “reserved” in the present notice of proposal.)

Paragraph (m)3 would provide that all additional vacation days may be used commencing July 1, 2010 subject to operational needs, although requests for use of this time shall not be unreasonably denied. While the CWA and IFPTE MOAs pertaining to employees of the State colleges and universities state that these unused, additional days may be used for the duration of the employee's service with the State, this provision is inconsistent with the statutory limitation regarding the carry-over of vacation leave (see N.J.S.A. 11A:6-2). Further, the MOAs expire on June 30, 2011. Therefore any additional, unused days are to be carried over for one year only, so that none of these days may be carried beyond June 30, 2012.

Paragraph (m)4 would state that an employee who leaves State service shall be paid for unused, earned vacation leave, while paragraph (m)5 would provide that, upon an employee's death, any such unused, earned vacation leave shall be paid to the employee's estate.

Paragraph (m)6 would state that, although these days will come under the heading of vacation leave, they are not to be credited based on years of service and will be tracked separately from an employee's allotment of vacation leave. A proposed new subsection (n) would provide that the proposed new subsection (m) shall not apply to employees of the nine State colleges and universities who utilized 10, rather than seven, mandatory furlough days. Such employees would be subject to the provisions of the proposed new subsection (l). See 42 N.J.R. 1116(a).

Finally, a technical amendment is proposed to N.J.A.C. 4A:6-1.2(e) to change a cross-reference from N.J.A.C. 4A:3-3.8(e) to 4A:3-3.8(f) regarding paid vacation leave to which intermittent State employees are entitled. N.J.A.C. 4A:3-3.8(e) refers not to paid vacation leave for intermittents but the establishment of intermittent titles in local service.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment would implement the paid leave bank provisions of the Committee Statement modification to the applicable MOAs described in the Summary above, so long as the affected employees were required to take up to seven mandatory furlough days in 2009 and 2010. Therefore, the crediting and usage of PLB days would apply uniformly and equitably to all such employees. Additionally, codifying the PLB program would afford users of the rules, including the State colleges and universities, an easy reference for implementing or benefiting from the program, as the case may be.

Economic Impact

The proposed amendment to N.J.A.C. 4A:6-1.2 codifying the PLB program for employees of the State colleges and universities who are not managers and who are

not represented by the AFT, would benefit these employees economically. Consistent with the intent of the agreement, the additional vacation days would counterbalance employees' required use of mandatory furlough days. As indicated in the Social Impact statement above, employees would receive parity in treatment with regard to the PLB days.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment governs State employee leave time and is not subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that the proposed amendment to N.J.A.C. 4A:6-1.2 would cause the generation or loss of jobs. The proposed amendment would govern State employee leave time.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment would govern State employee leave time.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Housing Affordability Impact

Since it concerns employment in the public sector, the proposed amendment would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact

Since it concerns employment in the public sector, the proposed amendment would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**):

N.J.A.C. 4A:6-1.2 Vacation leave

(a) – (k) (No change.)

(l) (Reserved)

(m) Notwithstanding subsection (l) above, in State service, full-time 12-month and 10-month employees of the nine State colleges and universities, with the exception of managers and those employees represented by the American Federation of Teachers who have utilized up to seven mandatory furlough days in 2009 and 2010, shall be credited with up to three additional working days of paid vacation leave, regardless of years of service, as follows:

- 1. An employee shall earn one paid leave day for every two mandatory furlough days utilized, up to a maximum of three paid leave days earned for seven mandatory furlough days utilized.**
- 2. By July 1, 2010, all employees who utilized a total of seven mandatory furlough days shall be credited with a total of three paid leave days.**
 - i. Employees who began State service after July 1, 2009 or who were in unpaid status for one or more pay periods between July 1, 2009 and June 30, 2010, and therefore utilized a prorated number of mandatory furlough days shall be credited with a prorated number of paid leave days in accordance with the schedules in N.J.A.C.**

4A:6-1.2 Appendix D, incorporated herein by reference, for 10-month employees, and N.J.A.C. 4A:6-1.2 Appendix E, incorporated herein by reference, for 12-month employees.

ii. Part-time employees who utilized a prorated number of mandatory furlough days shall have their paid leave days adjusted in proportion to the number of mandatory furlough days utilized.

3. These additional paid leave days may be used beginning July 1, 2010 through June 30, 2011, subject to operational needs. Approval for the use and scheduling of these days shall not be unreasonably denied. If not taken in a given year because of business demands, these days shall accumulate and be granted during the next succeeding year only. In no case shall any such additional paid leave be carried beyond June 30, 2012.

4. An employee who leaves State government service shall be paid for unused earned paid leave.

5. Upon the death of an employee, unused paid leave shall be paid to the employee's estate.

6. The paid leave days granted under this subsection do not correlate with years of service and shall, therefore, be tracked separately from the vacation leave accumulated under a(2) above.

(n) Subsection (m) above shall not apply to employees of the nine State colleges and universities who utilized up to 10, rather than up to seven, mandatory furlough days. Such employees shall be subject to the provisions of subsection (l) above.

(Agency Note: The text of the proposed new N.J.A.C. 4A:6-1.2 Appendices D and E follows without boldface symbolizing proposed new text; those portions of the appendices appearing in boldface are proposed to be so permanently.)

APPENDICES A - C (Reserved.)

APPENDIX D

10-Month State College and University Employee Proration Chart

Employed all of FY 2010 but not in Pay Status all of FY 2010

# of pay periods in pay status	SDF Day Obligation	Rounded SDF Day Obligation	Rounded PLB Days
22	6.00	6	3.0
21	5.73	6	3.0
20	5.45	5	2.5
19	5.18	5	2.5
18	4.91	5	2.5
17	4.64	5	2.5
16	4.36	4	2.0
15	4.09	4	2.0
14	3.82	4	2.0
13	3.55	4	2.0
12	3.27	3	1.5
11	3.00	3	1.5
10	2.73	3	1.5
9	2.45	2	1.0
8	2.18	2	1.0
7	1.91	2	1.0
6	1.64	2	1.0
5	1.36	1	0.5
4	1.09	1	0.5
3	0.82	1	0.5
2	0.55	1	0.5
1	0.23	0	0.0

APPENDIX E

12-Month State College and University Employee Proration Chart

Employed all of FY 2010 but not in Pay Status all of FY 2010

# of pay periods in pay status	SDF day obligation	Rounded SDF day obligation	Rounded PLB days
26	6.00	6	3.0
25	5.77	6	3.0
24	5.54	6	3.0
23	5.31	5	2.5
22	5.08	5	2.5
21	4.85	5	2.5
20	4.62	5	2.5
19	4.38	4	2.0
18	4.15	4	2.0
17	3.92	4	2.0
16	3.69	4	2.0
15	3.46	3	1.5
14	3.23	3	1.5
13	3.00	3	1.5
12	2.77	3	1.5
11	2.54	3	1.5
10	2.31	2	1.0
9	2.08	2	1.0
8	1.85	2	1.0
7	1.62	2	1.0
6	1.38	1	0.5
5	1.15	1	0.5
4	0.92	1	0.5
3	0.69	1	0.5
2	0.46	0	0.0
1	0.23	0	0.0